

FAIRFAX COUNTY GIS DATA LICENSE AGREEMENT

Between:

Fairfax County, Virginia

Fairfax County, 12000 Government Center Parkway, Suite ____, Fairfax, VA 22035 and hereinafter called "Fairfax County".

AND

Name of Customer _____
Address, _____ and
hereinafter called "Licensee".

WHEREAS Fairfax County has developed and has proprietary rights to GIS Data, which Licensee wishes to license the use of GIS Data and Fairfax County has agreed to license such use, in accordance with the terms of this agreement. This is a license agreement and not an agreement for sale. This license agreement is between Licensee and Fairfax County and gives the Licensee certain limited rights to use Fairfax County GIS Data.

NOW THEREFORE, in consideration of the previous, the mentioned covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

Section 1

Definition:

GIS Data is defined as the electronic data used to produce County maps, the related attribute data for the maps, and the digital aerial imagery of the County.

Section 2

Licensing Agreement:

Subject to the terms of this agreement and the restrictions set forth in Section 2, Fairfax County here by grants to Licensee, and Licensee hereby accepts, a non-sublicensable, non-assignable, non-transferable, non-exclusive license to use GIS Data. Fairfax County retains exclusive rights, title and ownership of the GIS Data under this agreement.

Section 3

Restrictions on Use:

Licensee shall:

- 1) not assign this agreement or transfer, sell, lease, distribute, market, export or grant a sublease of GIS Data or the license contained herein to any person except as, and when authorized in writing by Fairfax County to do so;
- 2) take all reasonable precautions to prevent unauthorized third parties or persons from accessing or using GIS Data in a way that would constitute a breach of this agreement including, without limitation, such precautions as Licensee would take to protect its own proprietary software, hardware or information.

Section 4

Permitted Uses:

The Licensee may install the GIS Data on any computers in their organization as needed.

Section 5

No Other Rights:

No interest, license, or any right respecting GIS Data other than expressly set out herein or in a separate written agreement between the parties, is granted to Licensee under this agreement.

Section 6

Duration:

This agreement is effective from the day the Licensee receives the GIS Data and continues until terminated. If Licensee fails to comply with any provision of this agreement, termination is automatic, without notice from Fairfax County and without the necessity for recourse to any judicial authority.

Section 7

Fairfax County is an Independent Contractor:

The parties agree that Fairfax County is an independent contractor. Nothing in this agreement shall be deemed to constitute a partnership or joint venture between the parties.

Section 8

WARRANTY AND DISCLAIMERS:

FAIRFAX COUNTY GIVES NO EXPRESSED OR IMPLIED WARRANTIES, REPRESENTATIONS, CONDITIONS, INDEMNITIES OF ANY KIND, STATUTORY OR OTHERWISE, WITH RESPECT TO GIS DATA, GIS DATA'S CONTENT, ACCURACY, CURRENCY OR COMPLETENESS, OR CONCERNING THE RESULTS TO BE OBTAINED FROM QUERIES OR USE OF THE GIS DATA, **INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. ALL GIS DATA IS EXPRESSLY PROVIDED AS IS AND WITH ALL FAULTS.** Licensee is responsible for ensuring the accuracy, currency and other qualities of all products (including maps, reports, displays and analysis) produced from or in connection with the GIS Data. If Licensee informs others that a product is based upon Fairfax County GIS Data, the Licensee shall disclose the limitations contained in this section. No employee or agent of Fairfax County is authorized to waive or modify this Section.

In no event shall Fairfax County be liable for any claim of any kind, including but not limited to:

- Punitive, exemplary or aggravated damages;
- Damages for loss of profit, service, or failure to realize expected savings;
- Loss of availability of Licensee or third parties materials;
- Loss of facilities including, without limitation, computer resources and any stored data;
- Indirect, consequential or specific damages contribution, indemnity or set-off in respect to any claims against Licensee;
- Any damages to third party products and Licensee material or any goods or services not developed or provided by Fairfax County; or
- Any damage whatsoever relating to interruption, delays, errors or omissions.

LICENSEE SHALL HAVE NO REMEDY AT LAW OR IN EQUITY AGAINST FAIRFAX COUNTY IN CASE THE DATA PROVIDED IS INACCURATE, INCOMPLETE OR OTHERWISE DEFECTIVE IN ANY WAY.

This Section survives the termination of the agreement.

Section 9

Data Interpretation:

GIS Data is developed and maintained solely for Fairfax County government functions. Use or interpretations of GIS Data by Licensee or others is their sole responsibility. Fairfax County does not provide GIS Data interpretation services.

Section 10

Spatial Accuracy:

Map data can be plotted or represented at various scales other than the original source of the data. The data user is responsible for adhering to industry standard mapping practices, which specify that data utilized in a map or analysis, separately or in combination with other data, will be produced at the largest scale common to all data sets. For example: if the zoning data scale is 1" = 200' and the County boundary data set is 1"=2000', the data sets should be used at a scale of 1"=2000' or smaller.

Section 11

Back-up and Risk of Loss:

Licensee shall keep back-up copies of the GIS Data for recovery purposes. All items including, without limitation, any materials, data, application, tapes, hardware, and software programs that have been delivered to Licensee by, or on behalf of, Fairfax County under this agreement shall become the responsibility of Licensee to protect from loss or damage. The replacement of any such items lost, damaged or destroyed after delivery to Licensee shall be at the sole expense of Licensee.

Licensee shall provide Fairfax County and its employees, agents and contractors with all necessary Licensee information to enable Fairfax County to carry out its obligations in this agreement.

Section 12

Hardware and Software:

Licensee, at its own expense, shall provide all necessary hardware, software and equipment needed to access and use the GIS Data

Section 13

Ownership of Intellectual Property:

Licensee expressly acknowledges at all times that Fairfax County is the sole owner of all intellectual property rights and all proprietary interests in the specification, GIS Data, or in any modification or derived work or work in progress relating thereto, including without limitation all written materials, logos, trademarks, trade names, copyrights, patent applications, patents, know-how, trade secrets or moral rights.

Section 14

Termination:

Without limiting other remedies available in law or equity, Fairfax County may terminate this agreement if Licensee is in violation of any section of this agreement. Upon such termination, all property of Fairfax County shall be returned to Fairfax County and no payments made to Fairfax County shall be returned to Licensee.

Section 15

Governing Law:

This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and shall be treated in all respects as a Virginia Contract.

Section 16

Force Majeure:

Dates and times by which Fairfax County is required to render performance under this agreement shall be automatically postponed to the extent and for the period that Fairfax County is prevented from meeting them by reasons of any cause beyond its reasonable control.

Section 17

Entire Agreement:

This contract represents the entire agreement of the parties and there are no representations or expectations of the parties except as expressly set forth herein.

Section 18

Legal Action:

No Licensee shall institute any legal action until all statutory requirements have been met.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement, in duplicate copies, each of which shall constitute an original, as of the day and year written;

FAIRFAX COUNTY

LICENSEE'S NAME

By: _____

By: _____

Title: _____

Title: _____

Organization: _____

Date: _____

Date: _____

Please note: This License Agreement contains 4 pages.